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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 71-1512

TERRY BROWN, ARLENE CIRELLI, PATRICK O'HEARN, and BOB YOUNG,

Petitioners,

—v.—

NEW MEXICO *ex rel.* A. L. HAPPY APODACA, A. L. HAPPY APODACA, DAVID L. NORVELL, Attorney General of the State of New Mexico, and BETTY FIORINA, Secretary of State of the State of New Mexico,

Respondents.

SUPPLEMENTAL BRIEF FOR PETITIONERS

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In May 1972, the petitioners filed a petition for certiorari in this case, seeking review of a decision of the Supreme Court of New Mexico. That decision had denied to the petitioners, who were potential voters and candidates for nomination in primary elections, leave to intervene in a mandamus proceeding which upheld the constitutionality of the state statute requiring filing fees for primary candidates. The validity of the New Mexico decision upholding that statute is also at issue in *Norvell* v. *New Mexico ex rel. Apodaca,* No. 71-1511, in which the Jurisdictional Statement was filed by the undersigned counsel simultaneously with the petition in the instant case. To date, no action has been taken in either case, and both cases remain on the Court's docket.

The respondents have now filed a Supplemental Brief contending that by virtue of intervening circumstances the issues have been rendered moot. The basis for this contention is that New Mexico has enacted new legislation dealing with the question of filing fees in primary elections. Under the former statute challenged in this case and in No. 71-1511, New Mexico assessed a filing fee, for all but four offices, equal to six percent of the annual salary of the office sought, for all candidates for party nomination in primary elections. Section 3-8-26A, N.M.S.A., 1953 (Repl. Vol. 1, 1970). The new legislation repealed this provision and replaced it with a fee of $50 for any office for which a filing fee is required. Any candidate unable to pay this fee may file a sworn statement that he or she is without financial means to do so.

Without in any way conceding that the issues in this case have been rendered moot by the statutory changes, the petitioners would suggest that the appropriate disposition of this case and of No. 71-1511 would be to vacate the judgment of the New Mexico Supreme Court and remand the case to that court for consideration of the mootness question in light of the new developments. That was the precise disposition made in *Johnson* v. *New York State Education Department*, 409 U.S. 75 (1972), a case involving access by indigent students to free textbooks where there had been an intervening decision by the school district to provide such books. See also, *Struck* v. *Secretary of Defense*, —— U.S. ——, 41 U.S. Law Week 3346 (No. 72-178, Dec. 18, 1972).

CONCLUSION

For the foregoing reasons, the judgment of the New Mexico Supreme Court should be vacated and the case remanded with instructions to consider whether enactment of Section 3-8-26, N.M.S.A. 1953, has rendered this case moot.

Respectfully submitted,

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July, 1973